



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 18, 1994

Lt. Owen Pulliam
Services Lieutenant, Jail Division
Collin County Sheriff's Office
4300 Community Boulevard
McKinney, Texas 75070

OR94-446

Dear Lt. Pulliam:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 25697.

The Collin County Sheriff's Office (the "sheriff") has received a request for information relating to inmates held in the Collin County jail. Specifically, the requestor seeks "the daily record of the number of inmates in this detention facility." In addition, the requestor seeks "records of receipts and expenditures of money for each inmate's account and a separate written record of all incidents which resulted in physical harm or serious threat of physical harm to any employee or inmates of a facility or other persons . . . [including] the names of the persons involved, a description of the incident, the action taken and the persons involved and the date and time of the occurrence." You seek to withhold only the records detailing receipts and expenditures of money for each inmate's account.¹ You have submitted representative samples of this information to us for review and claim that sections 552.101 and 552.108 of the Government Code exempt it from required public disclosure.²

¹You do not address the other information requested. We presume that it has been or will be made available to the requestor. See Open Records Decision No. 363 (1983).

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499, 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 protects information if its release would cause an invasion of privacy under the test articulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. Personal financial information may be excepted from required public disclosure under section 552.101. *See* Open Records Decision No. 373 (1983) at 3. Whether the public has a legitimate interest in such information, however, must be determined on a case-by-case basis. *Id.*; *see also* Open Records Decision Nos. 626 (1994); 600 (1992); 545 (1990).

In this case, a prior decision of this office resolves the common-law privacy issue. In Open Records Decision No. 396 (1983), this office addressed whether certain records regarding the trust accounts of jail inmates and financial transactions between the inmates and the jail commissary were protected under common-law privacy. This office concluded that information about sums deposited in these trust accounts and the total amount of money in the accounts do not relate to the expenditure of public funds; the public does not have a sufficient legitimate concern with this information to overcome an inmate's right to privacy about his or her affairs. On the other hand, information regarding an inmate's financial transactions with the jail commissary is not excepted from disclosure by common-law privacy; this information involves the receipt or expenditure of public funds. Open Records Decision No. 396. We have examined the information you submitted for review. The sheriff must withhold under common-law privacy information reflecting deposits in and the balance of inmate accounts. The remaining information, however, is not intimate and embarrassing and may not be withheld under section 552.101 of the Government Code.

You also seek to withhold the submitted information under section 552.108 of the Government Code. Section 552.108 excepts from required public disclosure:

- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime
- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.

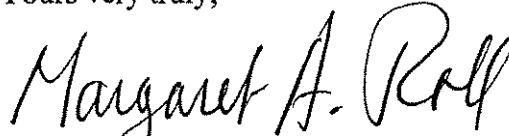
When applying section 552.108, this office distinguishes between information relating to cases that are still under active investigation and other information. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. *See generally Houston Chronicle Publishing Co. v. City of*

Houston, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Otherwise, when the "law enforcement" exception is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) at 3 (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). Whether information falls within the section 552.108 exception must be determined on a case-by-case basis. *Id.* at 2.

You do not claim that the submitted information relates to an on-going law enforcement investigation. In addition, you have not explained, nor does the submitted information supply an explanation on its face, how release of the submitted information would unduly interfere with law enforcement. We conclude, therefore, that the sheriff may not withhold the requested information under section 552.108 of the Government Code. Except as noted above, the sheriff must release the requested information in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

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Enclosures: Submitted documents

Ref.: ID# 25697

cc: Mr. John Lee Watt
Collin County Jail
4300 Community Boulevard
McKinney, Texas 75070
(w/o enclosures)